

Subpart E—Federal Land Transfers and Direct Federal Acquisition

§ 712.501 Purpose.

This regulation prescribes Federal Highway Administration (FHWA) policies and procedures relating to Federal land transfers and direct Federal acquisition.

[39 FR 32604, Sept. 10, 1974]

§ 712.502 Applicability.

The provisions of § 712.503 of this subpart apply to all projects on a Federal-aid system, direct Federal projects, or federally assisted highway projects. The provisions of § 712.504 apply only to Interstate, Defense Access, and Forest highways.

[39 FR 32604, Sept. 10, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

§ 712.503 Federal land transfers.

(a) Title 23 U.S.C., sections 107(d) and 317, provide for the transfer of lands or interests in lands owned by the United States to a State Highway Department (SHD) or its nominee for highway purposes.

(b) If lands or interests in lands owned by the United States are needed for highway purposes, the SHD shall pursuant to 23 U.S.C. 107(d) and 317 file an application with the FHWA except that if such lands or interests therein are managed or controlled by the Army, Air Force, Navy, Veterans Administration, or Bureau of Indian Affairs, the SHD may make applications directly to said agencies or their land acquisition agent as indicated in appendix 1. All applications shall include or be accompanied by the information shown in appendix 1.

(c) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the SHD, unless the FHWA at its discretion chooses to prepare them. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). When the SHD prepares the deed, it will submit the proposed deed to the FHWA for review and execution. Following execution, the grantee shall record the deed in the appropriate land record office and so advise the FHWA of the recording data.

(d) When the need for the lands or the materials acquired under this subpart no longer exists, notice of that fact must be given by the SHD to the FHWA and to the concerned Federal agency, and such lands or materials will revert to the control of the Federal agency from which they were appropriated or to its assigns. The notice, in a form suitable for recording, shall state that the need for the lands or materials no longer exists for the purposes for which acquired.

[39 FR 32604, Sept. 10, 1974; 39 FR 33797, Sept. 20, 1974, as amended at 40 FR 2179, Jan. 10, 1975]

§ 712.504 Direct Federal acquisition.

(a) Title 23 U.S.C. 101(a), 107, and 210(e) authorize Federal acquisition of lands and interests in lands for any project authorized for Interstate, defense Access or Forest highways where the State is unable to acquire the required rights-of-way or it is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary findings to proceed with the acquisition of the rights-of-way, the SHD's written application for Federal acquisition shall include:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date FHWA authorized the SHD to commence right-of-way acquisition, the date the project was advanced to Stage 2 program status, the date of the project agreement and a statement that the agreement contains the provisions required by sections 108(a), 108(b), and 111 of Title 23, U.S.C.;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The SHD's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of part 771 of this chapter;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations which have been conducted by the agency with landowners;

(9) An agreement that the SHD will pay its pro rata share of costs, including but not limited to those set forth in § 712.504(f) incurred in the acquisition of, or the attempt to acquire rights-of-way; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*).

(c) If the landowner tenders a right-of-entry at any time before the FHWA makes a determination that the SHD is unable to acquire the rights-of-way with sufficient promptness, the SHD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the SHD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (*ex parte*) from the proceeding and the estimated just compensation deposited into the registry of the Court for the affected parcel be withdrawn after the appropriate motions are approved by the Court.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the SHD to take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and

(8) Instructions that the authority granted to the SHD is not intended to preclude the U.S. Attorney from taking action, before the SHD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal Court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property as will in the opinion of the court reimburse him for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(h) The lands or interests in lands, acquired under these provisions, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the SHD, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may be set forth in the deed; and

(5) Notify FHWA at the appropriate time that all the conditions have been performed by the State.

(i) The Deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

[39 FR 32604, Sept. 10, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

APPENDIX 1 TO SUBPART E OF PART 712— APPLICATION FOR FEDERAL LAND TRANSFERS

(1) *Preparation of application*

The State's application, referenced in §712.503, shall include or be accompanied by the following information:

(a) The purpose for which the lands are to be used.

(b) The estate or interest in the land required by State statute.

(c) The Federal-aid project number.

(d) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land.

(e) A commitment to construct the highway on or to remove materials from the lands to be transferred within a period of not more than 10 years following the transfer of the lands to the State.

(f) A map showing the survey of the lands to be acquired.

(g) A legal description of the lands desired.

(h) A statement on compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*), the Historic Preservation Act (16 U.S.C. 470(f)), and with provi-

sions for Preservation of Parklands (49 U.S.C. 1653(f)), if applicable.

(2) *Submission of application.*

The application referenced in §712.503 shall be submitted to FHWA, except as otherwise prescribed herein. Certain Federal agencies have special legislation for granting rights-of-way over lands under their jurisdictions and may proceed under their own laws. In those cases, the SHD should file its application directly with the Federal agency. Although they have special authority, the Federal agencies sometimes wish to proceed under 23 U.S.C. 107(d) and 317 and, in such cases, the application should be filed with the FHWA. The agencies having special authority which would permit the State to file its application directly are as follows:

(a) *Bureau of Indian Affairs.* Application should be submitted directly to the Bureau of Indian Affairs, Washington, DC, for rights-of-way across tribal lands or individually owned lands held in trust by the United States or encumbered by Federal restrictions. All other lands held by the Bureau of Indian Affairs are transferred under 23 U.S.C. 107(d) and 317.

(b) *Army or Air Force.* State should submit its application directly to the installation commander and the appropriate District Engineer, Corps of Engineers, Department of the Army.

(c) *Navy.* State should submit its application directly to the District Public Works Officer of the Naval District involved.

(d) *Veterans Administration.* State should submit its application directly to the Director, Veterans Administration, Washington, DC.

[39 FR 32604, Sept. 10, 1974]

Subpart F—Functional Replacement of Real Property in Public Ownership

SOURCE: 39 FR 33312, Sept. 17, 1974, unless otherwise noted.

§712.601 Purpose.

This regulation prescribes Federal Highway Administration (FHWA) policies on functional replacement of real property in public ownership.

§712.602 Applicability.

The provisions of this regulation are applicable, to the extent practicable under State law, to all States and political subdivisions thereof that acquire real property for any highway or highway related project in which Federal funds will participate in any part